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Arnold G. Klein, Pro Se

In the Application of Arnold Gregory Klein

Ser.No: 10/753,660
Filed: January 9, 2004
For: INSECT BARRIER WITH DISPOSABLE ADHESIVE MEDIA
Art Unit: 3643
Examiner: Kurt C. Rowan

Board of Patent Appeals and Interferences
P.O. Box 1450
Alexandria, VA 22313-1450

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REPLY BRIEF IN RESPONSE TO EXAMINER'S ANSWER OF 09/24/2007

Dear Sir:

Applicant requests Examiner's attention to his request for a change of correspondence request and Attorney withdrawal form submitted with the Appeal Brief filed June 5, 2007. All correspondence in the matter of this application should be sent to the following address:

Arnold Klein
P.O. Box 724
Sandia Park, NM 87047

In response to the Examiner's Answer, Applicant provides the following comments:

REMARKS/ARGUMENTS

In the Examiner's Answer of 10/24/2007 there is no specific response to many of the arguments and evidence (Exhibits) presented in the APPEAL BRIEF, filed by the applicant on June 5th, 2007. It is for this reason and a desire for brevity that applicant incorporates by reference The APPEAL BRIEF and the patent application prosecution record to date.

Reply to Examiner's (10) Response to Argument

"Applicant argues the intended use of the insect barrier, but Erickson shows the structure to capable of performing the intended use". – Examiner's Answer p. 3

The Erickson device is not structurally configured with a means for friction fitting the coated media elastically on the support for a nectar type bird feeder as specified in part b. of applicant's claim 1. There is no interference structure or elasticity in the Erickson trap member 16 or paper ring 20 to keep them in position on a typical nectar feeder support. They are only configured to be held in place by the interfering parts of a furniture caster.

"As to the "means for friction fitting recited in claim 1, applicant argues that the center mounting of Erickson is too large to be friction fit on the hanging rod. However, it should be pointed out that patent drawings are not taken to be drawn to scale unless stated". Examiner's Answer p. 3

Applicant directs the Examiner's attention to the APPEAL BRIEF Exhibit 1. Erickson Patent Figures. The trap member 16 and paper ring 20 are shown very clearly to have a

center hole considerably larger in diameter than the caster stem 11. The Applicant further directs the Examiner's attention to the APPEAL BRIEF, Exhibit 3. Ant Traps for Casters – currently sold". This Exhibit gives the dimensions (Center Hole Diameter: 5/8") for an ant trap device that appears in all respects to be equivalent to Erickson's trap member 16 as shown in his patent drawings. The underlined portion of the advertisement reads: "Center hole large enough to fit over most wood caster shanks". The Erickson trap member 16 and/or paper ring 20 are held in place by being sandwiched between the mating parts of the caster assembly, they do not have "a means for friction fitting the coated media elastically on the support for a nectar type bird feeder" as specified in claim 1 and as shown in APPEAL BRIEF, Exhibit 2 (instant patent FIG. 6).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the center mounting hole is too large to fit a hanging feeder rod 5/32" or smaller) are not recited in the rejected claims(s). Examiner's Answer p. 3-4

Applicant directs the Examiner's attention to the underlined portion of part b. of the claim 1 (shown above). Since the coated media is friction fitted elastically on the feeder support, it is not necessary to assign specific dimensions to the hole. The nectar feeder support, being typically a hanging cord or hook is not reliably found at some standard dimension. The support is typically much smaller than Erickson's trap member or paper ring, mounting hole. The coated media mounting hole is elastically ~~stretch-fit~~ around the feeder support. Because of this elastic friction fit capability, the hole may be quite small or may be an elongated slot or cut in the media.

Applicant argues that in Erickson, the trap member and paper ring are held in place by a compressive force between the mating parts of the caster assembly, but this force also involves friction between the elements and therefore can be considered as a frictional force. Examiner's Answer p. 4

This assertion is misleading. As we all know, friction is virtually everywhere, and when combined with gravity it is holding down almost everything on earth. Applicant asserts that no competent designer would claim that the Erickson device is "friction fitted elastically" on the caster. The instant invention is held in place by a force parallel to the media and generated by stretching the media mounting hole over the feeder support structure. This is in no way comparable to the Erickson device.

Applicant argues that Erickson shows an assembly of parts and that a typical nectar bird feeder support has no transition feature of assembly of parts, but the nectar bird feeder is not positively claimed. Examiner's Answer p. 4

This assertion is wrong. The instant invention is a device adapted to be mounted on a support for a nectar type bird feeder. Applicant directs Examiner to the underlined portions of claim 1. The instant patent specification, the claim 1 preamble, and the claim1 body, both sections a. and b. limit the instant invention to application with nectar type bird feeders.

1. An insect barrier device for use in preventing insect contamination of nectar type bird feeders, said insect barrier device including:
 - a. a disposable, water-resistant media having an integral mounting hole, wherein said media is coated on at least one surface with a non-drying adhesive layer, said non-drying adhesive layer being sufficiently tacky to act as a physical barrier to the passage of insects, and wherein said coated

media is adapted to be placed via said mounting hole on a support for the nectar type bird feeder; and

- b. a means for friction fitting the coated media elastically on the support for the nectar type bird feeder, wherein said coated media is adapted to act as a physical barrier to block insect crawling routes along said support for said bird feeder.

Applicant argues that Erickson does not provide an enabling disclosure or teaching relating to protecting the adhesively coated surfaces. However, see Figs. 1, 2 and 3 of Erickson which show a concave rim 18 which would protect the adhesive from the underside from water. Examiner's Answer p. 4

Applicant argued in the last paragraph of page 8 of the APPEAL BRIEF, that Erickson does not disclose any means for “protecting the adhesively (moist glue) coated surfaces of his trap member 16 or paper ring 20” because neither of these elements appear to be adhesively pre-coated as is the instant invention. Applicant presented evidence in the APPEAL BRIEF Exhibit 3 and Exhibit 4 that Erickson's trap member 16 was not (and is not now) supplied with an adhesive coating. The rim 18 of the trap member 16 was likely formed concave to protect the homemaker from injury due to inadvertent foot or heel contact with the sharp, punched edge. In a device for this indoor application, protection from water, would not have been a consideration.

Applicant argues that Erickson does not specify a non-drying adhesive, but see Erickson, line 58 where Erickson states a moist glue is employed. If the adhesive of Erickson dried, it is not seen how the product would function. Hence Erickson would desire to use a non-drying adhesive. Examiner's Answer p. 4

The Examiner has discovered a basic problem with the Erickson insect trap. Of course, there is no way of knowing if Erickson would desire to use a non-drying adhesive since

he never discloses anything related to the adhesive drying out, etc. Applicant directs the Examiner's attention to the APPEAL BRIEF, Exhibit 4 (Circa 1922) showing an ant proof caster which appears similar to the Erickson device, but which is mounted inverted (cup-side-up). Applicant suggests that this device was superior to Erickson's precisely because it could be filled with borax powder and did not have to be smeared on the underside with "moist glue" as specified in Erickson's disclosure. Of course, borax would have been a substance available in most households at the time.

Applicant argues claim 10, but claim 10 has been withdrawn due to a restriction requirement. Examiner's Answer p. 4

The applicant is not arguing claim 10. He directs the Examiner to page 15 of the APPEAL BRIEF. The argument is specifically directed at refuting the Examiner's persistent and unfounded argument that the instant application claim 1 is not restricted to application to nectar type bird feeders. The insect barrier device of claim 1 is adapted and claimed to fit on or over a typical nectar feeder support structure, as specified in the claim 1 preamble and body sections (a) and (b). Revising claim 1 to read that "*the insect barrier device is positioned between the nectar feeder and the feeder support*" as the Examiner has suggested is technically incorrect. The Examiner knows that the instant application claim 10 was written for an "interposed" insect barrier device, a device adapted to be placed between the feeder and the feeder support structure. Of course, there would have been no technical problem inserting the Examiner's suggested

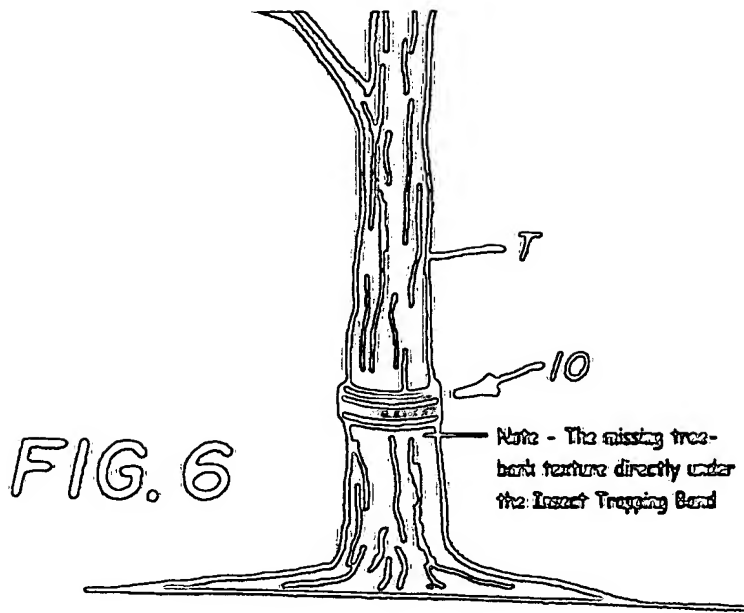
wording "*the insect barrier device is positioned between the nectar feeder and the feeder support*" into the claim 10.

Applicant argues that Olson would not desire an elastic band since this would cause the band to bridge over the surface and lose contact with the tree and further that the stretching of the insect trapping band could result in disruption of the insect trapping adhesive 20 and could result in the adhesive running out of the recessed groove 15. However, applicant has shown no evidence to prove this conclusion. Examiner's Answer p. 4-5

In Olson's patent disclosure, column 2, lines 22 – 25 he states:

Furthermore, by producing the basic strip from a flexible, pliable material, the strip will accommodate the rough surface of many trees to form a barrier preventing insects from passing under the strip.

The above disclosure and the fact that Olson never uses the term "elastic" anywhere in his patent application, support applicant's argument. If Olson had desired his band to be elastic, he would have used this term in his disclosure. Applicant suggests that Olson recognized that there was a strong possibility that insects would be able to pass under his insect trapping band if it was not "flexible" or "pliable" enough to maintain an uninterrupted perimeter contact with the "rough surface of many trees"(see the annotated Olson patent - Figure 6, below). Of course, if the band was stretched around the tree, it would only be in contact with the high points.



In regards to claims 3-4, applicant argues that in Erickson, the trap member 16 and paper ring do not seem to be precoated with an adhesive. However, see Erickson in lines 59-80, where it is stated that the adhesive substance may be applied to the paper disk or the ring 20 and the ring may be applied manually to the inner surface of the trap member. It thus appears that there is a precoating and therefore, it would have been obvious to employ a release paper as shown by Olson to prevent the adhesive from sticking to other surfaces. Examiner's Answer p. 5

There is no disclosure in Erickson that talks about protecting the adhesive coated surfaces of his trap member 16 or paper ring 20 with release paper. It would have been absolutely essential if these elements were adhesively precoated, that these surfaces be protected from contact during handling. Erickson, in lines 56 – 65 of his specification states that: *The inner surface of the trap member 16 preferably is coated with an adhesive substance such as moist glue as shown by the stippling in Figure 3. The adhesive substance may be applied directly to the inner surface of the trap member or it may be applied to a vehicle such as a paper disk or ring 20, Figure 4, and said ring may be applied manually to the inner surface of the trap member.*

Applicant asserts that the absence of any disclosure in Erickson discussing how the adhesive surfaces are to be protected during handling, the moist glue reference and the use of the indefinite The adhesive substance may be applied language support his argument that Erickson's trap member 16 and particularly the paper ring 20 were not precoated. See also the APPEAL BRIEF, Exhibit 3 Ant Trap for Casters – currently sold. These replacement traps are not precoated with any adhesive.

Applicant further argues that the layer of release material in Olson is provided to the contact adhesive not the insect trapping adhesive, but it would have been obvious to provide a release paper to any adhesive surface to prevent the adhesive from sticking to non-target items and to provide ease of use and handling. Examiner's Answer p. 5

The Examiner has finally acknowledged that Olson only uses the release paper to protect the reverse side of his band where a coating of contact adhesive is applied. Of course, he is assuming that an application of non-drying adhesive like that found on the Olson band will not adhere to release paper. This is incorrect. It may appear obvious to protect Olson's non-drying adhesive with release paper, but thicker applications of non-drying adhesive will adhere to even the slickest release paper. Only a very thin and viscous application of non-drying adhesive can be protected with a release paper. Applicant arrived at this very thin non-drying adhesive loading as disclosed in the instant application through extensive experimentation. Olson relies exclusively on the recessed groove 15 formed in the band to hold and protect from handling, the insect trapping adhesive 20.

In response to applicant's argument based upon the age of the age of the reference to Erickson, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. Examiner's Answer p. 5

Applicant submits the following two tables with a listing of patents as evidence to support that those skilled in the art, have continually tried to solve the ant contamination of nectar feeder problem. These water moat devices and nectar feeders with integral water moats require regular cleaning and refilling as discussed in detail in the

Background of the Invention in the instant application.

Prior Art Patents – Interposed Devices and Nectar Feeders - Designed to Solve the Problem of Ant Contamination of Nectar Feeders

U.S. Patents for Water Moat Ant Traps - positioned interposed between nectar feeder and feeder support structure					
Patent No.	Issue Date	Inventor	Primary Examiner	U.S. Cl.	Field of Search
4,441,458	Apr. 10, 1984	Mercil	Eskovitz, Jay	119/51 R; 119/51.5	119/51 R, 51.5, 63 119/52 R, 61
4,980,990	Jan. 1, 1991	Hiday	Rowan, Kurt	43/107; 43/122	119/52.1, 57.8, 61 43/107, 122, 132.1
6,463,878 B1	Oct. 15, 2002	Moody	Jordan, Charles	119/57.9; 119/61; 119/52.3	119/51.5, 52.3 119/57.9, 61, 72

U.S. Patents for Nectar Feeders - with integrally formed ant trapping water moats					
Patent No.	Issue Date	Inventor	Primary Examiner	U.S. Cl.	Field of Search
4,691,665	Sep. 8, 1987	Hefner	Swiatek, Robert	119/77; 119/51 R	119/61, 63, 51 R, 77; D30/14, 16
4,901,673	Feb. 20, 1990	Overstreet	Weiss, John	119/77; 119/72	119/72, 77, 52 R, 51R 119/52 B, 57
5,062,390	Nov. 5, 1991	Bescherer et al.	Mancene, Gene	119/72; 119/77; D30/125	119/52.2, 52.3, 52.4 119/72, 57.8, 57.9, 77 D30/121, 124, 125, 129
5,269,258	Dec. 14, 1993	Brown	Wilson, John	119/57.9; 119/61; 119/72	119/72, 77, 61, 52.2 119/52.3, 57.8, 57.9, 220/506; 206/394
5,507,249	Apr. 16, 1996	Shaw	Price, Thomas	119/72	119/72, 77, 52.3 119/52.2, 52.4, 57.8, 57.9

Applicant further directs the Examiner's attention to a small sample of the commercial products for keeping ants out of nectar feeders, shown in the photo(s) below. It should be noted that the water moats are now being made volumetrically larger or are shrouded to reduce the water evaporation and frequency of refilling required. The Ant Guard™ product has the low maintenance advantages of the instant invention, but because it uses an insecticide soaked pad, it is considered undesirable by many bird feeding authorities and environmentally conscious consumers. None of the prior art patented devices or commercial devices uses or suggests the use of a non-drying adhesive.

A Small Sample of Commercial Products – for keeping ants out of nectar feeders



AntGuard™
 FOR HUMMINGBIRD FEEDERS

And Other Nectar Feeders

PRECAUTIONARY STATEMENTS
 Hazards to Humans & Domestic Animals
CAUTION
 If you touch the protective disk, wash skin thoroughly with soap and water before eating or using tobacco. Avoid contact of disk to feed and foodstuffs.

ENVIRONMENTAL HAZARDS
 The active ingredients in this disk are toxic to fish. Keep out of lakes, streams or ponds. Do not contaminate water by disposal of used AntGuard. Use the product only as specified on this label.

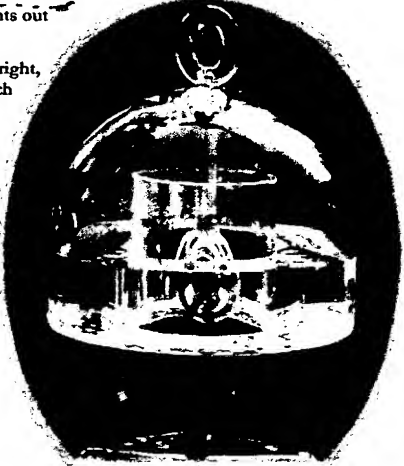
STORAGE and DISPOSAL:
 Store AntGuard in original container. Store in cool, dry place. Do not store with food, drugs or personal contact items. When finished using, wrap device in paper and put in trash.

The original **DETOURANT™**
 keeps those pesky sugar ants out of hummingbird feeders.

Invert, fill with water, turn upright, hang from top ring, then attach hummingbird feeder.

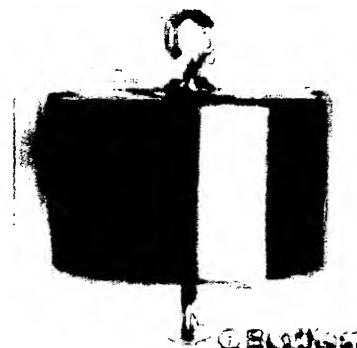
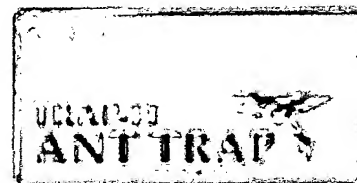
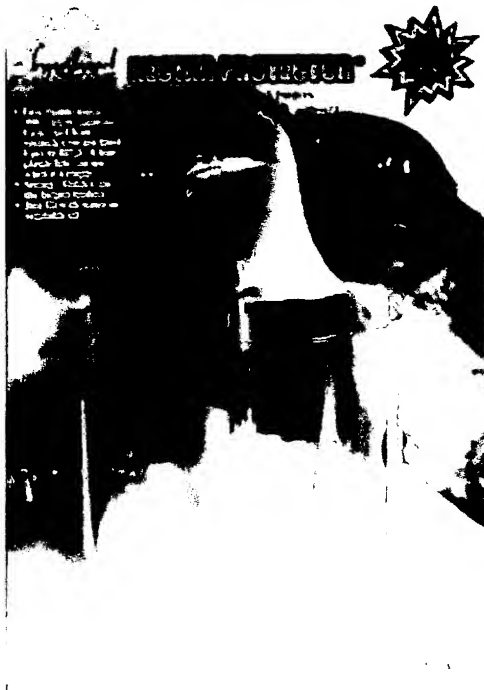
As the water evaporates it condenses on the inside of the dome and runs back into the water barrier-wall.

Dome top notably slows the evaporation of water barrier (up to 5 weeks in windy 90+ degree Oklahoma summers.)



Fax (918) 449-9019
 Phone (918) 451-2771
 Detourant
 PO Box 33
 Broken Arrow, OK. 74013-0033

Patented and Trademarked 2002
 13lb/case 36 units UPS Ground



Concluding Remarks

The rejection of the claims 1, 2, 5 and 18 under 35 USC 102 (b) as being anticipated by Erickson is unfounded. The Erickson device is a trap adapted for use with a furniture caster assembly. Erickson does not disclose the use of a non-drying adhesive. The applicant has shown that Erickson's trap member and paper ring were not adhesively pre-coated. The Erickson Insect Trap is a metal platform or paper disk supported by a caster assembly and onto which a homemaker could apply some insect trapping material, such as "moist glue". Lastly, Erickson's Insect Trap is not adapted for outdoor use and does not have a means for friction fitting the coated media elastically on the support for a nectar type bird feeder as required in applicant's claim 1.

The rejection of claims 3 and 4 under 35 USC 103 (a) as being obvious over Erickson in view of Olson are unfounded. The applicant has shown that the insect trapping adhesive 20 of Olson's Insect Trapping Band is not protected with a covering of low adhesion paper. Thicker applications of non-drying adhesive as disclosed in Olson will adhere to low adhesion paper. The applicant has also shown that Olson's Insect Trapping Band is nowhere disclosed or suggested to be "elastic". Stretching Olson's band will cause it to bridge over the surface irregularities of a typical tree trunk.

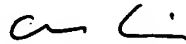
The rejection of claim 19 under 35 USC 103 (a) as being obvious over Erickson is unfounded. Neither the trap member 16 or paper disk 20 of Erickson is elastic. The Erickson trap member and/or paper ring are supported and held in place by being trapped or sandwiched fit within the mating parts of a furniture caster. They are not suggested for

or adaptable to being friction fitting elastically on the support for a nectar type bird feeder.

In view of the foregoing discussion, it is respectfully requested that the Honorable Board of Patent Appeals and Interferences overrule the final rejections of claims 1, 2, 3, 4, 5, 18 and 19 over the cited art, and hold applicant's claims to be allowable over such art. Applicant further requests the Patent Board to consider allowing the claims 6 – 9 and 16 that were dependant on claim 1. **

** Applicant requested reinstatement of these claims previously withdrawn that were dependant directly or indirectly on claim 1, namely claims 6 – 9 and 16 in the response filed September 21, 2006. The Examiner has never responded to this request, either in the Final Office Action mailed on December 12, 2006 or in this response (mailed on 10/24/2007) to the APPEAL BRIEF (filed June 7, 2007).

Respectfully Submitted,



Arnold Klein, Applicant